THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5968 OF 2005

DATED:18.8.2005

Between:

S.D.G.Software Technologies Private Limited,

Rep. by its Manager Administration,

K.Nirmal Kumar, S/o.K.Varadaraja Swamy

501, V Floor, Babukhan Millenium Centre, Somajiguda

Hyderabad

…Petitioner

And

The Central Power Distribution Company of A.P. Ltd.,

Khairatabad, Hyderabad

And another

…Respondents

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ORDER:

The petitioner company is availing power supply under category-I from respondents. Second respondent surprised the petitioner's premises on 26.2.2005 and having come to a provisional conclusion that the meter is taking low reading than connected load and inferred that petitioner is guilty of pilferage and accordingly disconnected power supply and served provisional assessment order calling upon the petitioner to pay a sum of Rs.2,95,542/- being half of the estimated value of the energy pilfered. This order is assailed in the Writ Petition.

The matter is being disposed of at the interlocutory stage as the question raised herein is squarely covered by a judgment of Division Bench of this Court.

In W.A.No.452 and 477 of 2004 a Division Bench of this Court having noticed the provisions of Section 126 of the Electricity Act, 2003 held as under.

> Section 126 provides for the process for making assessment, provisional and final, if on an inspection the equipments, gadgets, machines, devices are found to be tampered with or there is unauthorized use of electricity. There is no such power, while issuing provisional assessment, to forthwith stop or disconnect electricity supply. Provisional assessment is in the nature of a show cause notice against which the consumer is entitled to have an opportunity of hearing before passing final order of assessment by the concerned authority. As such the notices dated 7.1.2004 will be deemed to have been issued only under Section 126 of the Electricity Act under which there is no authority or power to respondents to discontinue or disconnect the electricity supply or call upon the appellants to pay even part of the provisional assessment amount till final assessment is made. Only on the appellants not complying with the final assessment orders, the respondents can proceed further in the matter and that will also be subject to the appeals to be filed by the appellants.

The legal position is not denied by the learned Standing Counsel for A.P. Transmission Corporation.

Therefore, the Writ Petition is allowed and the impugned provisional assessment order insofar as the same results in disconnection of power supply is set aside. Liberty is given to petitioner to file explanation to the provisional order treating the same as show cause notice whereupon the competent authority shall pass appropriate orders in accordance with Section 126(3) of the Act within a period of three weeks from the date of receipt of the explanation. A week's time is granted to petitioner to file explanation.

The Writ Petition is accordingly allowed. No costs.

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(V.V.S.RAO, J)

18.8.2005

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